

# Lewis County Comprehensive Plan Amendment/Rezone

File No.: MSC13-0103

## Planning Commission Staff Report

### A. PROPOSAL INFORMATION

<i>Contact</i>	Lemmie Rockford	
<i>Owner</i>	Eagle Cliff Northwest LLC	
<i>Request</i>	<input checked="" type="checkbox"/> Map <input type="checkbox"/> Text <input type="checkbox"/> UGA Change <input type="checkbox"/> Other	
	Existing Zoning Category:	Agricultural Resource Land
	Proposed Zoning Category:	Mineral Resource Land
	Existing Comprehensive Plan Designation:	Agricultural
	Proposed Comprehensive Plan Designation:	Mineral
<i>Location/Site Size</i>	<i>The Foster Creek Pit is located on Mandy Road, south of the Cowlitz River, east of Vader</i>	<i>Approximately 57 acres</i>
<i>Parcel Number(s)</i>	<i>012524000000 and 012487002002</i>	
<i>Site Description</i>	<i>Site</i>	<i>The site currently includes approximately 20 acres of gravel mining and the rest in tree farm.</i>
	<i>Topography</i>	<i>The site generally flat.</i>
	<i>Other Features</i>	<i>NA</i>

### B. SUMMARY EVALUATION

CRITICAL AREAS REVIEW	
Critical Aquifer Recharge Area	Severe Susceptibility
Floodplain	100 year floodplain
Geologically Hazardous Areas	N/A
Wetlands	N/A
Hydric Soils	N/A
Stream Buffers	May impact the site south of Mandy Road
Shoreline	Cowlitz River, a Rural Shoreline Designation

**C. APPLICATION SUMMARY:** The application, received December 13, 2013, is a request to “opt in” to the Mineral Resource Land (MRL) designation from the current Agricultural Resource Land (ARL) designation requiring a concurrent Comprehensive Plan Map change from Agricultural to Mineral.

**D. SITE INFORMATION:** The proposal consists of two parcels that are approximately 57 acres in size, located along the flood terrace plain of the Cowlitz River. The site is about 5 miles southwest of the City of Toledo.

The site is an operational gravel mine (20 acres) with abutting parcel anticipated for inclusion of the expansion of the gravel mining to include stockpiling

Property to the north and south are designated ARL. To the east and west are a mix of ARL and MRL. The Cowlitz River is located to the north.

**E. RESOURCE LANDS:** The Zoning Ordinance and Comprehensive Plan, and other applicable regulations provide the framework for consideration of Zone Changes and concurrent Comprehensive Plan Map amendments. The following are relevant Lewis County Code Title 17 text citations related to the consideration of the proposed amendment.

#### **Agricultural**

##### **17.30.080 Agricultural land – Agricultural Resource Land**

Agricultural land or agricultural resource land means land primarily devoted to the commercial production of aquaculture, horticultural, viticulture, floricultural, dairy, apiary, vegetable, or animal products to berries grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, or livestock, and that has long-term commercial significance for agricultural production.

##### **17.30.605 Uses**

The intent and purpose of this section is to maintain and enhance resource-based industries, encourage the conservation of agricultural lands, and discourage incompatible uses.

##### **17.30.610 Primary Uses**

Agriculture and agricultural activities including aquaculture, viticulture, floriculture, horticulture, general farming, dairy, the raising, feeding, and sale or production of poultry, livestock, fur-bearing animals, honeybees including feeding operations, Christmas trees, nursery stock, and floral vegetation, agricultural processing facilities, commercial greenhouse operations that are an integral part of a local soil based commercial agricultural operations, wholesale nurseries, and other agricultural activities.

**Staff Response:** *The land at issue and the lands surrounding the subject parcels are zoned ARL and MRL. The soils of the subject parcels are Prime Farmland Soils (148*

Newberg Fine Sandy Loam). A review of aerial photographs and pictometry confirm the current land use as agriculture (Christmas trees) and gravel mining.

The applicant states that the active gravel mining operation is pursuant to a current permit granted by the Department of Natural Resources and dating back to 1995.

Historically, the subject parcels were designated by the Lewis County Assessor as Current Use Agriculture under RCW 84.34. The current owner, removed 16.32 acres from parcel 012524000000 and 3 acres from parcel 012487002002 from Current Use Agriculture and transferred them to the "highest and best use classification" of gravel mining. The Assessor's Office approved these changes in 2012 and 2013.

## **Mineral**

### **17.30.210 Mineral Resource Lands**

"Mineral resource lands" means lands primarily devoted to the extraction of minerals or that have known or potential long-term commercial significance for the extraction of minerals.

### **17.30.730 Designation**

"Mineral resource land may be so designated upon initiation either of the county or a property owner or owners"

### **17.30.750 Primary uses**

Quarrying and mining of minerals or material, including, but not limited to, sand and gravel, sand, rock, clay, coal, and valuable metallic and nonmetallic substances.

### **17.30.850 Process for petitioning for designation as a mineral resource land ("opt-in").**

An "opt-in" provision is provided for the voluntary designation of properties as mineral resource land by the property owner(s) upon the provision of written notification to the administrator of their desire for such designation. Such application for designation shall be processed as an amendment to the comprehensive plan and development regulations. Such amendments are processed on a yearly basis, consistent with Chapter 17.12 LCC.

**Staff Response:** The land surrounding the subject parcels are zoned ARL and MRL. Changing the zoning of the site from ARL to MRL would allow additional gravel mining at this location. It is prudent to assume the most intense possible best use/development for the site when comparing potential impacts to the rezone with impacts of the site. This would include additional truck traffic, rock crushing and associated effects, including noise and dust. This site has an active DNR permit for gravel mining.

*In accordance with LLC 17.30.850 **Process for petitioning for designation as a mineral resource land (“opt-in”)**, the applicant submitted a site evaluation for gravel expansion dated March 2, 2014 prepared by Strata Design Inc. The conclusion of this analysis indicated the site characteristic and the gravel mine expansion fulfill the criteria set forth in LCC 17.30.720 **Classification**.*

## **Applicable Comprehensive Plan Chapter and Policies:**

### **Chapter 2 Lewis County 20-Year Vision**

**Natural Resource Areas**-Lewis County will have well-managed natural resource areas that continue to provide opportunities for natural resource based industries, like agriculture and timber, into the future. Natural resource areas are also the focus of Lewis-County’s recreational and tourist activities. These activities are encouraged, but also well-managed with respect to the overall preservation of our important natural resources.

Environmental and resource protection will be encouraged in order to preserve the quality environment enjoyed in Lewis County for future generations. The open lands, forests, river and stream corridors are essential resources which provide the fish and wildlife habitat, recreational opportunities, scenic beauty, and aesthetic qualities that make Lewis County and attractive place to live.

### **Natural Resource Lands Sub-Element**

**“Agricultural/Agricultural Resource Lands** are those lands primarily devoted to the commercial production of aquaculture, horticultural, viticulture, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, or livestock, and that has long-term commercial significance for agricultural production.”

**“Mineral Resource Lands** are those lands primarily devoted to the extraction of minerals or that have known or potential long-term commercial significance for the extraction of minerals.”

## **NATURAL RESOURCE LANDS GOALS, OBJECTIVES AND POLICIES:**

**NR Goal:** Maintain agricultural, commercial timber production, mineral resource extraction lands and their ancillary uses.

### **Objective**

NR1 Identify and conserve resource lands supporting agriculture, forest, and mineral extractive industries.

### **Policies**

NR 1.2 - The County should protect the interests of land-owners who wish to continue the practice of management of natural resources.

NR 1.4 - Resource use, particularly agricultural and timber uses and accessory uses, are encouraged in all rural areas.

NR 1.17 - Agriculture (including ranching), forestry and mineral resource related activities should be conducted in a manner that will minimize their adverse impacts on water quality, habitat, and other environmentally sensitive areas.

NR 1.18 - Mineral extraction sites should be restored in a fashion consistent with Washington and Lewis County laws and regulations.

**Staff Response:** *A comprehensive plan amendment from Agriculture to Mineral would keep the land under the natural resource designation. The Growth Management Act and this county's history in designating ARL require careful review of any re-designation of ARL. However, due to the proposed use of the site as an active mining pit permitted by DNR, the applicant's report showing the presence of mineral/aggregate deposits at the site, and the landowner's intent merely to move the site from one natural resource designation (ARL) to another resource designation (MRL), the request appears to support the goals, policies, and objectives associated with a rezone and comprehensive map amendment.*

**F. STATE ENVIRONMENTAL POLICY ACT (SEPA):** An environmental checklist was prepared by Lewis County for the proposal and Determination of Non-Significance (DNS) for a non-project action was issued for the proposal on May 21, 2014, with a comment and appeal period ending on June 11, 2014. The DNS was circulated to agencies of jurisdiction and published in the East County Journal on or before May 21, 2014.

**G. PUBLIC NOTICE REQUIREMENTS:** Notice of the public hearing on the proposal was published in the Legal Notice section of the East County Journal and the Chronicle on or before May 21, 2014.

**H. PUBLIC PARTICIPATION:** The Lewis County Community Development Department met the following Public Participation Program guidelines for notice and public hearing(s):

- Circulation of application and SEPA to affected Lewis County agencies and jurisdictions.
- County-wide general circulation of a legal notice placed in the East County Journal and the Chronicle.
- Workshops and public meeting held in Lewis County Courthouse on February 11, March 11, April 8, 2014 and May 13 then set for public hearing on June 10, 2014.
- Circulation of amendment to state agencies for review as required by RCW 36.70A.
- Publication of amendment and map on Lewis County internet site.
- Information regarding proposed Rezones and concurrent Comprehensive Plan Map Amendment(s) were available at Timberland Regional Libraries and Senior Centers.

**I. PUBLIC AND OTHER AGENCY OR DEPARTMENT COMMENTS:** None received as of the date this report was produced.

**J. PUBLIC WORKSHOPS SUMMARY:** The Planning Commissioners discussed during the two workshops, MSC-13-0103, a request for Zone Change from ARL to MRL, and concurrent Comprehensive Plan Map amendment from Agricultural to Mineral.

Currently, the property is an active gravel pit mine. Two properties within a quarter mile, one upriver and one down river of this parcel are currently zoned MRL and have a comprehensive plan designation of Mineral. All other properties adjacent to the Foster Creek Pit are zoned ARL and have a comprehensive plan designation of Agricultural.

The Foster Creek Pit, permitted through DNR, would like to stockpile material on site which means increasing the area covered by their permit and subsequent land mined for gravel extraction.

In 2008-2009, as part of the County's effort to escape from invalidity for failing to comply with the ARL designation requirements of the Growth Management Act,

the Planning Commission reviewed all of the potential agricultural resource lands in Lewis County with staff and retained consultants and transmitted its recommendation to the Board of County Commissioners to designate approximately 90,000 acres of land as ARL, including the sites at issue in this application.

In the course of determining which Lewis County lands it would recommend to the Board of County Commissioners be designated as ARL, the Planning Commission, staff and retained consultants recognized that the task was huge, complex, time-sensitive, and fraught with the potential for mistakes in proposing that lands be designated as ARL. In particular, the Planning Commission, in transmitting its recommendation to the BOCC, expressed concern that, notwithstanding the County had complied with all notice requirements in the process, many landowners had not attended the hearings and meetings and might be unaware that their lands were being designated as ARL. Accordingly, the Planning Commission recommended the BOCC adopt a procedure for landowners who felt their land had been designated in error could apply to the County to have the designation removed. This procedure is listed in LCC 17.30.600 Relief from errors in ARL designation.

At the time, the principal concern related to lands designated as ARL but with soils that were prime if drained or irrigated. The Planning Commission felt it had inadequate information concerning the presence of drainage on lands that were deemed to have “prime” farmland soils if drained and that it had inadequate information concerning the presence of irrigation on lands with soils that would be deemed “prime” if irrigated. The Board of County Commissioners agreed and adopted a correction mechanism and, in the years subsequent to the Growth Management Hearings Board decision approving the county’s designation of the additional ARL, a small number of Lewis County landowners took advantage of the procedure to have their land re-designated.

In this case, there is no indication that the mapping of the applicant’s soils was incorrect. Also, it is unclear what portion of the subject parcels was being mined in 2008-09 when the Planning Commission recommended their designation as ARL. Although the applicant obtained a mining permit from DNR in 1995, the extent of the mine changed over time. The applicant did not apply to the Assessor’s Office to change the tax designation of the subject parcels from current use agriculture to “highest and best use” until 2012, at least three years after the Planning Commission proposed designation of the parcels as ARL. The process used by the Planning Commission in 2008 – 09 and adopted by the Board of County Commissioners designated parcels as ARL where the majority of the parcel was in prime soil or agricultural use (Christmas trees) even if a substantial part of the parcel was not prime or was not in agricultural use. It is unclear what portion of this property was in mining as of 2008 – 09 when the parcels were designated as ARL. In any case, the landowner of the subject

parcels did not pursue in the past and has not invoked misclassification as part of his application.

Additionally, the Board of County Commissioner ratified through Resolution 09-300, the option for a property owner who believed a parcel was included in ARL for reasons other than an error in soil classification to request a rezone. The landowner of the subject parcels did not pursue this option.

The current application is a rezone and comprehensive map amendment, the applicant has not identified either of the above mentioned processes for relief as part of this request. The applicant's focus appears to be centered on expansion of an existing gravel mining operation.

**K. CONCLUSION:** The Planning Commission should review specific objectives and policies related to each zone change and concurrent Comprehensive Plan map amendment in its decision. Staff has listed the objectives and policies related to this request. Additionally, information contained on the rezone application itself must be weighed against criteria in the Zoning Ordinance section 17.30.600 and Comprehensive Plan.

Based on the facts of this application, the Planning Commission concludes and recommends the subject parcels be rezoned to MRL with a corresponding comprehensive plan designation change to Mineral.



## **REVIEW OF EXHIBITS:**

**The following exhibits were provided to the Planning Commission members for consideration during workshop(s).**

1. Planning Commission Staff Report dated March 11, 2014
2. Aerial Map
3. Zoning Map
4. Future Land Use Map
5. Site Evaluation for Gravel Mine Expansion, dated March 2, 2014 prepared by Strata Design LLC
6. Agreement between Lewis County and Eagle Cliff Northwest, LLC dated March 10, 2014
7. Letter from Eagle Cliff Northwest, LLC to Department of Natural Resources dated stamped May 8, 2014

**The following exhibits were provided to the Planning Commission members with the staff report associated with the public hearing(s).**

8. Letter dated February 5, 2014 from Stan May to Eagle Cliff Northwest, LLC
9. Staff Report prepared for the June 10, 2014 Planning Commission meeting
10. Application for Amendment along with attachments

**The remaining exhibits are part of the record and available upon request.**

11. Environmental checklist (SEP14-0014)
12. SEPA Threshold Determination (SEP14-0014)
13. Affidavit of Mailing – SEPA compliance (SEP14-0014)
14. Affidavit of Publication legal notice
15. Affidavit of Posting legal notice
16. Notice to Department of Commerce 60-day review
17. Response from Department of Commerce 60-day review